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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,262	12/27/2004	Alan R. Hargens	US1212 (111845-0054)	7689
27189 7590 05/14/2008 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 530 B STREET SUITE 2100 SAN DIEGO, CA 92101			EXAMINER DEMILLE, DANTON D	
			ART UNIT 3771	PAPER NUMBER
			NOTIFICATION DATE 05/14/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com
PTONotifications@procopio.com

Office Action Summary	Application No. 10/519,262	Applicant(s) HARGENS ET AL.	
	Examiner Danton DeMille	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/02/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9, 10, 11, 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Smith.

Broadly, Smith teaches a method for enhancing blood flow in a body part by kneading the body part by providing pulsating pressure application. Smith inserts the body part through a port in a hypobaric chamber as shown in figure 1. A vacuum chamber 5 provides a negative pressure within the chamber 2. As shown in figure 1 the end of the device there is a non-occlusive seal at the port. The diameter of the port of the end wall of the device is larger than the body part. The diameter of the port appears to include a cover. Even with the cover the diameter is larger than the body part. Therefore the seal does not contact the body part. The vacuum chamber 5 creates a mild negative pressure within the chamber 2. The body part is exposed to mild negative pressure for a pre-determined period. It would appear that Smith anticipates the invention as claimed.

Regarding claim 12, the port aperture is adjustable any where along the length of the limb and therefore comprehends the claim language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 15, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Giarretto.

Giarretto teaches another method for enhancing blood flow in a body part where the negative pressures are between 10-85 mm Hg. It would have been obvious to one of ordinary skill in the art to modify Smith to use negative pressures including 10-85 mm Hg as taught by Giarretto since it would have been obvious to use any conventional pressure desired or require dependent on practical considerations of intended.

Claims 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Walker.

Smith teaches a suction massage to the limbs for treating human ailments such as polio. Walker teaches a suction massage to the limbs for treating human ailments such as diabetes, column 2, lines 5-8. It would have been obvious to one of ordinary skill in the art to modify Smith to use the suction massage therapy device for diabetes patients as well as taught by Walker since it is well known that diabetes patients experience poor blood circulation in the extremities and any device that massages the limbs would increase blood circulation.

Claims 17, 19, 20, 21, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Walker and Giarretto.

Regarding claim 12, the port aperture is adjustable any where along the length of the limb and therefore comprehends the claim language. It would have been obvious to one of ordinary skill in the art to modify Smith to use the suction massage therapy device for diabetes patients as well as taught by Walker since it is well known that diabetes patients experience poor blood

circulation in the extremities and any device that massages the limbs would increase blood circulation. It would have also been obvious to one of ordinary skill in the art to further modify Smith to use negative pressures including 10-85 mm Hg as taught by Giarretto since it would have been obvious to use any conventional pressure desired or require dependent on practical considerations of intended.

Claims 2-4, 13-14, 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

16 May 2008

/Danton DeMille/
Danton DeMille
Primary Examiner
Art Unit 3771